



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

WW-16J

By electronic and first class mail

October 23, 2009

Ms. Ginger Mullins, Chief
Regulatory Branch
U.S. Army Corps of Engineers
Huntington District
Attn: CELRH-OR-F
502 Eighth Street
Huntington, WV 25701-2070

Subject: 2004-01152/Buckingham Coal Wash Plant

Dear Ms. Mullins:

The U.S. Environmental Protection Agency (EPA), Region 5, has reviewed Buckingham Coal's proposal to discharge fill material into approximately 5,824 linear feet of waters of the U.S. in association with the construction of a slurry and refuse impoundment for an underground coal operation. No perennial streams will be filled; impacts consist of 4,263 linear feet of intermittent and 1,561 linear feet of ephemeral channels. The impoundment area is located between the mine site and the coal loading facility.

EPA expressed concern with the impacts to waters of the U.S. and the proposed mitigation to compensate for loss of aquatic resources. Proposed mitigation was to construct 5,065 linear feet of streams on site and enhancement, debris removal and preservation along 15,797 linear feet of the West Branch of Sunday Creek at an off-site mitigation area.

On August 18, 2009, Region 5 staff, your staff and representatives of Buckingham Coal met to discuss the project and view the proposed slurry impoundment and off-site mitigation sites. At that time, we discussed the type and amount of mitigation that would be appropriate to compensate for impacts to the streams on site. As a result, Buckingham

agreed to preserve 31,531 linear feet of streams (9,602 linear feet of perennial, 13,092 linear feet of intermittent, and 8,837 linear feet of ephemeral channels), preserve 0.74 acre of Category 2 wetlands and 145 acres of forested upland buffer, enhance riparian corridors along the preserved streams and construct 5,065 linear feet of ephemeral/intermittent streams on-site using natural channel design methods. Mitigation areas will be permanently protected under a conservation easement and deeded over to the Ohio Department of Natural Resources, Division of Wildlife.

We believe the proposed mitigation compensates for affected project site water quality functions. The mitigation is also consistent with the Ohio Environmental Protection Agency's (OEPA) Total Maximum Daily Load (TMDL) for Sunday Creek approved in 2006. Sunday Creek has been designated a Limited Resource Water for acid mine drainage impairment; the average conductivity levels across the watershed measured at 1920 μ S/cm. The TMDL indicates that over 85% of 30.4 stream miles of the West Branch of Sunday Creek have an aquatic life use impairment, with mine drainage identified as the leading cause. The TMDL implementation plan for Sunday Creek focuses on improving aquatic life resources in the watershed including habitat improvement and preservation. The proposed protection and enhancement measures will further TMDL implementation and maintain or improve wildlife habitat, increase abundance and biodiversity of organisms specific to riparian zones, improve the filtering role of riparian vegetation in the Sunday Creek Watershed, attenuate flood peaks, and enhance nutrient cycling.

As a special condition to the permit, EPA requested biological monitoring be included as a condition in the Section 404 permit for the reconstructed stream mitigation. EPA has consistently recognized that biological assessments are important in determining success of mitigation and consistency with water quality standards, because they represent a direct measure of attainment of the aquatic life use. In Ohio, biological information is essential for determining attainment with the aquatic life uses. We appreciate Buckingham developing a biological monitoring plan and conducting the baseline surveys so quickly. Biological monitoring should be conducted upstream and downstream of the impoundment, and both before and after the proposed construction. Monitoring should begin before mining operations start and continue for five years after mining is completed.

In light of the modifications made to the project proposal to preserve significant aquatic resources in the impaired Sunday Creek watershed, permanently protect those areas under a conservation easement, restore on-site streams using natural channel design, and conduct biological monitoring, EPA does not foresee any delay in the Corps' ability to issue the permit. We have reviewed the draft permit and are satisfied that our concerns have been addressed.

I want to thank you and your staff for your cooperation and willingness to address our issues. If you have any question, please call me at 312-886-9296, or Wendy Melgin of my staff at 312-886-7745.

Sincerely,

A handwritten signature in black ink, appearing to read "Tinka G. Hyde", with a long horizontal flourish extending to the right.

for Tinka G. Hyde,
Director, Water Division

cc: OEPA